

EXHIBIT "A-10"

CAUSE NO. 2022DCV-1098-B

CHARLES L. FOSTER, III,

Plaintiff,

v.

WILMINGTON SAVINGS FUND
SOCIETY, FSB, PHH MORTGAGE-
REVERSE MORTGAGE AND
WILLIAM ATTMORE

Defendants.

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IN THE DISTRICT COURT

117TH JUDICIAL DISTRICT

NUECES COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

Defendants PHH Mortgage Corporation, incorrectly named as “PHH Mortgage – Reverse Mortgage” (“***PHH***”), and Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee for Cascade Funding Mortgage Trust HB2 (“***Wilmington***”) (PHH and Wilmington are collectively “***Defendants***”) file their Original Answer and Affirmative Defenses to Plaintiff’s Original Petition, and Verified Application for Temporary Restraining Order and Application for Temporary Injunction (the “***Petition***”), and respectfully show as follows:

I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants deny each and every claim, charge, and allegation contained in the Petition and request that the Court require Plaintiff to prove his claims by a preponderance of the credible evidence.

II. AFFIRMATIVE DEFENSES

2. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff’s claims are barred, in whole or in part, by reason of Defendants’ compliance with

applicable contractual provisions, statutes, regulations, agency interpretations, and other provisions of law.

3. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that any damages suffered by Plaintiff were caused by persons not within the authority, control, or agency of Defendants.

4. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, because the sole and contributing causes of the conduct complained of in the Petition was as a result of Plaintiff's own conduct, or the conduct of others, over whom Defendants has no authority or control.

5. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to satisfy conditions precedent to recovery. Specifically, Plaintiff has failed to tender the outstanding balance owed on the loan that is the subject of this action.

6. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, laches, ratification, unclean hands and/or estoppel.

7. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to make payments as agreed and therefore is in default and breached the agreements that are the subject of this action.

8. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, on the grounds that Plaintiff has not sustained any damages proximately caused by Defendants' conduct.

9. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

10. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, on the grounds that Plaintiff lacks standing to bring the claims.

11. In addition to and/or alternatively, without waiving the foregoing, Defendants assert that Plaintiff's claims are barred, in whole or in part, based on the statute of frauds.

12. Plaintiff cannot establish a right to payment of attorney's fees from Defendants.

13. Defendants reserve the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation and discovery.

WHEREFORE, Defendants pray that this Court enter judgment that Plaintiff take nothing on his alleged claims, that the Petition be dismissed in its entirety, and for such other and further relief to which they may be entitled.

Respectfully submitted,

McGLINCHEY STAFFORD, PLLC

By: /s/ Thomas W. White, Jr.

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**ATTORNEYS FOR DEFENDANTS,
PHH MORTGAGE CORPORATION and
WILMINGTON SAVINGS FUND SOCIETY,
FSB, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY IN ITS CAPACITY AS OWNER
TRUSTEE FOR CASCADE FUNDING
MORTGAGE TRUST HB2**

CERTIFICATE OF SERVICE

I certify that a correct copy of the foregoing was filed with the District Clerk's office by operation of the Texas e-filing system and has been forwarded in accordance with the Texas Rules of Civil Procedure on April 29, 2022, as follows:

Via E-file

Andrew M. Greenwell
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Attorney for Plaintiff

/s/ Thomas W. White, Jr.

THOMAS W. WHITE, JR.

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This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Teri Rostron on behalf of Thomas White
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 Status as of 5/2/2022 11:05 AM CST

Associated Case Party: CharlesLFoster

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew M.Greenwell		agreenwell@harris-greenwell.com	4/29/2022 3:18:23 PM	SENT

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